

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Jakob Tiarnan Rumble,

Civil No. 14-CV-2037 (SRN/FLN)

Plaintiff,

ORDER

v.

**Fairview Health Services, d/b/a
Fairview Southdale Hospital, and
Emergency Physicians, P.A.,**

Defendants.

Christy L. Hall, Jill R. Gaulding, and Lisa C. Stratton, Gender Justice, Minnesota Women's Building, 550 Rice Street, Suite 105, St. Paul, Minnesota 55103; Katherine S. Barrett Wiik and Lindsey Wheeler Lee, Robins Kaplan, LLP, 800 LaSalle Avenue, Suite 2800, Minneapolis, Minnesota 55402, for Plaintiff.

Jessica M. Marsh, Sara Gullickson McGrane, and Scott D. Blank, Felhaber Larson, 220 South Sixth Street, Suite 2200, Minneapolis, Minnesota 55402, for Defendant Fairview Health Services, d/b/a Fairview Southdale Hospital.

Chad W. Strathman, Emergency Physicians P.A., 5435 Feltl Road, Minnetonka, Minnesota 55343; Jessica L. Roe and Shannon N.L. Cooper, Roe Law Group, PLLP, 60 South Sixth Street, Suite 2670, Minneapolis, Minnesota 55402, for Defendant Emergency Physicians, P.A.

SUSAN RICHARD NELSON, United States District Court Judge

Before the Court are letters from Plaintiff's counsel and Defendants' counsel [Doc. Nos. 198 & 199] regarding the effect on this litigation of a recent injunction issued in Franciscan Alliance, Inc. v. Burwell, No. 7:16-cv-00108-O (N.D. Tex. Dec. 31, 2016)

[Doc. No. 198-1]. Defendants state that the court in Franciscan Alliance enjoined the nationwide enforcement of the Department of Health and Human Services' regulation under Section 1557 that prohibits discrimination on the basis of gender identity. (Defs.' Letter at 1.) Because Plaintiff's Section 1557 claim also alleges discrimination on the basis of gender identity, Defendants argue that the Franciscan Alliance ruling requires dismissal of Plaintiff's federal claims. (*Id.*) Alternatively, Defendants contend that the injunction warrants the issuance of a stay of the instant case. (*Id.*) Plaintiff, however, argues that the Franciscan Alliance ruling has no bearing on the instant case. (Pl.'s Letter at 1.) Accordingly, Rumble opposes any stay and requests that the Court hear and decide the pending dispositive motions, currently scheduled for argument on January 13, 2017.

Because the dispositive hearing date is within a week and because the Court requires full briefing related to the issues raised in the parties' letters, the Court postpones the hearing on the parties' dispositive motions to a later date to be determined by the Court after the submission of briefing described below.

The parties are directed to submit simultaneous briefing on two issues. First, the parties shall address whether, and in what way, the Franciscan Alliance injunction is binding on this Court. Second, as this Court noted in its March 16, 2015 Order on Defendants' Motions to Dismiss, the Minnesota Human Rights Act ("MHRA") prohibits discrimination based on sexual orientation or sex. (Order of 3/16/15 at 15 [Doc. No. 31]) (citing Minn. Stat. § 363A.11, subd. 1(a)(1)). Minnesota law defines "sexual orientation" as "having or being perceived as having a self-image or identity not traditionally

associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, subd.

44. The Court is therefore of the view that the MHRA embraces claims of discrimination based on gender identity. The parties are directed to present their positions on whether, if the Court were to stay Plaintiff's Section 1557 claim, this action could proceed to dispositive motion practice and trial on Plaintiff's MHRA claim, under the exercise of the Court's supplemental jurisdiction.

The additional briefing from the parties shall be of no more than 10 pages and shall be submitted simultaneously by 5:00 pm on January 13, 2017.

THEREFORE, IT IS HEREBY ORDERED THAT

1. The dispositive motions hearing scheduled for January 13, 2017 is
POSTPONED; and
2. The parties shall submit simultaneous briefing of no more than 10 pages by 5:00 pm on January 13, 2017, as described in this Order.

Dated: January 5, 2017

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge